

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2009-4305
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 17, 2009
St. Clair County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on March 17, 2009. Claimant and her boyfriend personally appeared and testified.

ISSUE

Did the department properly propose to sanction claimant's Family Independence Agency (FIP) grant for noncooperation with work-related activities?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) Claimant and her boyfriend currently reside together with their five month old daughter in [REDACTED], [REDACTED].

(2) In September, 2008, the department referred the baby's father (a member add) to the Jobs, Education and Training (JET) program as required by PEM Item 229; his start date was September 29, 2008, and initially, he did participate (Department Exhibit #1, pg 1).

(3) On October 3, 2008, claimant's boyfriend began treating with a cardiologist to determine the cause of ongoing symptoms which include episodic unconsciousness, nausea, dizziness, fatigue and frequent heart palpitations (Client Exhibit A, pg 3).

(4) On October 15, 2008, the department notified claimant's boyfriend he was being deemed noncompliant with his JET assignment; a triage meeting was scheduled for October 23, 2008 to address any potential barriers to continued participation as required by PEM Item 233A.

(5) The day before the triage appointment, the baby's father passed out on a city bus and was transported via emergency medical crew to [REDACTED] for treatment of a vasovagal episode (a cardiac abnormality marked by slow pulse, a fallen blood pressure and sometimes convulsions)(Client Exhibit A, pg 1).

(6) The next day, claimant's boyfriend's JET caseworker and his case manager from [REDACTED] attended the previously scheduled triage meeting, as did claimant and her boyfriend.

(7) The couple testified they attempted to present documentation of claimant's boyfriend's treatment start date and his cardiac emergency room visit the day before, but it was not considered by the department's triage team; consequently, when that team proposed the FIP sanction claimant filed a timely hearing request.

(8) At hearing, the couple again presented the documentation referenced in Finding of Fact #7 above (Client Exhibit A, pgs 1-4).

(9) Since this sanction has been proposed, claimant's boyfriend has continued with professional cardiac treatment; the objective medical data to date (Holter Monitor/EKG) continues to reveal cardiac abnormalities of unknown origin.

(10) Following the hearing on March 17, 2009, claimant's boyfriend was scheduled for another appointment with his treating cardiologist.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The applicable departmental policy states:

TRIAGE

JET participants will not be terminated from a JET program without first scheduling a "triage" meeting with the client to jointly discuss noncompliance and good cause. Locally coordinate a process to notify the MWA case manager of triage meetings including scheduling guidelines.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled triage meeting, offer a phone conference at that time. Clients must comply with triage requirement within the negative action period.

When a phone triage is conducted for a first noncompliance and the client agrees to comply, complete the DHS-754, First Noncompliance Letter, as you would complete in a triage meeting. Note in the client signature box "Client Agreed by Phone". Immediately send a copy of the DHS-754 to the client and phone the JET case manager if the compliance activity is to attend JET.

Determine good cause based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with DHS or MWA.

If the FIS, JET case manager, or MRS counselor do not agree as to whether "good cause" exists for a noncompliance, the case must be forwarded to the immediate supervisors of each party involved to reach an agreement.

DHS must be involved with all triage appointment/phone calls due to program requirements, documentation and tracking.

Unplanned Event or Factor

Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to the following:

- . Domestic violence.
- . Health or safety risk.
- . Religion.
- . Homelessness.
- . Jail.
- . Hospitalization.

The documentary evidence and credible testimony of record clearly establish claimant's boyfriend had an undiagnosed cardiac condition which quite possibly presented a health/safety risk to his JET participation in October, 2008. As such, good cause has been established and the proposed FIP penalty must be reversed. Furthermore, the department's policy includes the following option:

TEMPORARILY DISREGARDED WORK ELIGIBLE INDIVIDUALS

Clients in the following situations are “WEIs” but are temporarily disregarded from participation requirements and do not count in the state’s work participation rate. Required hours are zero. It is imperative that these situations be monitored and timely action taken when the situation changes or time frames expire.

Deferral for Short-Term Incapacity

Defer persons with a mental or physical illness, limitation, or incapacity which is expected to last less than three months and which prevents participation. Defer for up to three months.

Verify the short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs form, or other written statement from an M.D. or D.O.

If a non-pregnancy-related condition lasts or is expected to last more than 3 months, follow deferral policy for long-term incapacity below.

At the triage meeting, the department’s team should have given claimant’s boyfriend the opportunity to verify his need (or lack of need) for a short-term incapacity deferral by providing him with a Medical Needs form (DHS-54A) to be completed by his cardiologist so that full medical clearance to participate, or medical restriction on participation, or possible medical accommodations necessary to participation could have been fully and fairly assessed (See PEM Item 230A, pg 2).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department prematurely proposed to sanction claimant's FIP grant for noncompliance with work-related activities because good cause was shown.

Accordingly, this case is returned to the local office for initiation of the potential deferral policy option referenced above. **SO ORDERED.**

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: _____

Date Mailed: _____

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

MBM/db

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